

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Applications of	)	
	)	
<b>Masconomet Regional School District</b>	)	NAL/Acct. No. MB201541410017
	)	FRN: 0014645212
For Renewal of License for	)	
Station WBMT(FM), Boxford, Massachusetts	)	Facility ID No. 40640
	)	File Nos. BRED-20060208AAJ;
	)	BRED-20131127BNT
and	)	
	)	
<b>New England Broadcasting Educational Group, Inc.</b>	)	Facility ID No. 197976
	)	File No. BNPED-20140227AFX
	)	
For a New Noncommercial Educational	)	
FM Station at Newbury, Massachusetts	)	

**ORDER**

**Adopted: March 29, 2016**

**Released: March 30, 2016**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (“Bureau”) has before it: (1) the captioned applications (“2006 Application” and “2013 Application,” respectively) of Masconomet Regional School District (“Masconomet” or “Licensee”) for renewal of license for noncommercial educational (“NCE”) Station WBMT(FM), Boxford, Massachusetts (“Station”);<sup>1</sup> (2) an informal objection to the Application (“Objection”) filed on September 12, 2006, by Joseph McDonough (“McDonough”), and responsive pleadings related to the 2006 Application.<sup>2</sup> We also have before us: (3) the captioned mutually-exclusive

<sup>1</sup> The 2006 Application was filed to renew the Station’s license for the license term ending April 1, 2006. Because we had not yet acted upon the Application, the Licensee timely filed a supplemental license renewal application on November 27, 2013. *See* File No. BRED-20131127BNT. In the course of this proceeding, Licensee advised the Bureau that its proper name is Masconomet Regional School District (rather than System), and we have updated our records accordingly.

<sup>2</sup> Licensee filed an “Opposition to Petition to Deny” on October 11, 2006 (“Opposition”), to which McDonough filed a Reply on October 17, 2006 (“Reply”). McDonough filed a “Supplement to Petition to Deny” on October 4, 2006 (“Supplement”) and a “Further Supplement to Petition to Deny” on December 14, 2006 (“Further Supplement”). Licensee filed an “Opposition to Further Supplement to Petition to Deny” on April 12, 2007 (“Opposition to Further Supplement”), and McDonough filed a “Reply to Opposition to Further Supplement to Petition to Deny” on April 23, 2007 (“Reply to Opposition to Further Supplement”). Licensee filed its renewal application on February 8, 2006, and public notice was released on February 13, 2006, making Petitions to Deny due on May 15, 2006. *See* 47 C.F.R. § 73.3516(e). McDonough’s initial pleading therefore is untimely and therefore will be considered as an informal objection pursuant to 47 C.F.R. § 73.3587. Because there is no formal pleading (continued . . .)

application for a new NCE FM station at Newbury, Massachusetts filed by New England Broadcasting Educational Group, Inc. (“NEBEG Application”); (4) a Petition to Deny the NEBEG Application (“Petition”), filed on September 9, 2014, by Masconomet; (5) additional responsive pleadings related to that application;<sup>3</sup> and (4) a Joint Request for Approval of Time-Share Settlement Agreement (“Settlement Agreement”) filed by the parties on March 29, 2016, in which, *inter alia*, McDonough requests dismissal of the Objection and Masconomet requests dismissal of its Petition.

2. In a 2013 *Policy Statement*,<sup>4</sup> the Bureau announced that certain student-run NCE radio stations that committed first-time violations of certain documentation requirements of the Rules would be afforded the opportunity to negotiate a consent decree with a reduced payment amount.<sup>5</sup> The *Policy Statement* limited the policy to “violations of rules that require the submission of reports and other materials or public notice of information . . . .”<sup>6</sup> Additionally, it stated that all other violations of Rules were not included and would be processed under current procedures applicable to all licensees.<sup>7</sup>

3. In this Order, we adopt the attached Consent Decree entered into by the Bureau and Licensee. The Consent Decree resolves issues arising from the Bureau’s review of the Application for the Station as to whether the Licensee violated Section 73.3527 of the Commission’s Rules (“Rules”), which governs the maintenance of a noncommercial educational station’s public file<sup>8</sup> and Section 73.3580 of the Rules,<sup>9</sup> which governs the broadcasting of pre-filing renewal announcements. The Consent Decree and Compliance Plan also resolve issues relating to the Objection filed against the Application. For this reason, and as discussed below, we also deny the Objection. Additionally, by virtue of the Consent

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cycle for informal objections, we are free to consider McDonough’s supplementary filings. *See, e.g., WCVO(FM), Gahanna, Ohio*, Letter, 20 FCC Rcd 12348, 12349 n.4 (MB 2005) (Section 1.45, which governs filing periods for pleadings, covers formal petitions to deny and not informal objections).

No petitions or objections were filed against the 2013 Application.

<sup>3</sup> These include NEBEC’s Opposition to the Masconomet Petition to Deny, filed on October 27, 2014, after three requests for extensions of time to file; and Masconomet’s Reply, filed on December 1, 2014.

<sup>4</sup> *See William Penn University*, Policy Statement and Order, 28 FCC Rcd 6932 (MB 2013) (“*Policy Statement*”).

<sup>5</sup> *Id.*, 28 FCC Rcd at 6932 ¶ 2 (in cases of “first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations,” instead of issuing a Notice of Apparent Liability (NAL), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee will pay a reduced civil penalty and agree to a compliance plan. In negotiating the amount, the Bureau will consider “the totality of circumstances, including giving appropriate consideration to the station’s finances with respect to reducing the base forfeiture amount significantly.”).

<sup>6</sup> *Id.*, 28 FCC Rcd at 6936 - 6937 ¶ 11. Covered violations include the failure to “(a) file the required materials with the Commission, such as the Ownership Reporting Rule, (b) place the required materials in a file, such as in the station’s public inspection file pursuant to the Public File Rule, or (c) publish a notice in a local newspaper or broadcast as an announcement on the station pursuant to Section 73.3580 of the Rules.”

<sup>7</sup> *Id.*, 28 FCC Rcd at 6937 ¶ 11. Specifically, the *Policy Statement* noted “that substantive operational violations, *e.g.* broadcast of indecent/obscene/profane material, commercial announcements, illegal contests, underwriting, news distortion and other programming-related violations, violations of the Commission’s technical, public safety, tower/transmitter site construction and maintenance rules, etc., as well as recurring or subsequent violations of any kind will continue to be handled under current procedures, with no reduction or relief for student-run stations, apart from those potentially available to all licensees under current procedures in appropriate circumstances.”

<sup>8</sup> 47 C.F.R. § 73.3527.

<sup>9</sup> *See* 47 C.F.R. § 73.3580.

Decree and Settlement Agreement, we dismiss the McDonough Objection and the Masconomet Petition, grant the 2006 and 2013 Applications and the NEBEG Application, and we modify WBMT(FM)'s authorization and issue an authorization to NEBEG specifying the hours of operation agreed to in the Settlement Agreement.

## II. 2006 APPLICATION

### A. Background

4. Informal objections to license renewal applications must provide properly supported allegations of fact that, if true, would establish that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Communications Act of 1934 as amended (the "Act"), which governs our evaluation of an application for license renewal.<sup>10</sup> Section 309(k)(1) provides that we are to grant a renewal application if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations that, taken together, constitute a pattern of abuse.<sup>11</sup> If such a finding cannot be made on the basis of the application and pleadings and grant with conditions is not appropriate under the circumstances, Section 309(k) provides that the license renewal application is to be designated for a hearing.

5. In his Objection, McDonough alleges that: (1) the Station impeded McDonough's efforts to view its public inspection file; (2) the Station's public inspection file does not contain quarterly issues/programs lists required by Section 73.3526(e) of the Rules;<sup>12</sup> (3) the Station did not broadcast the required license renewal pre-filing announcements; (4) the Station is not operating at its licensed power; (5) the Station broadcasts on an erratic schedule and Licensee violated Section 1.45 of the Rules by failing to report the Station's silent status from June-October 2006; (6) the Station has broadcast indecent material; (7) the Station does not maintain an EAS receiver; and (8) Licensee incorrectly certified as to the Station's RF Compliance in the Application.

6. In the Settlement Agreement, McDonough proposes to withdraw his Objection. He includes an affidavit required by Section 73.3588 of the Rules<sup>13</sup> that he has neither been promised nor received any financial consideration for the dismissal of his Objection.

### B. Discussion

7. We find that McDonough's request for dismissal of the objection complies with Section 73.3588 of the Rules. Additionally, the staff has reviewed the Objection and finds that, except for the

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<sup>10</sup> 47 U.S.C. § 309(d)(1). See, e.g., *Applications of Cumulus Licensing, Corp. (Assignor) and Clear Channel Broadcasting Licenses, Inc. (Assignee)*, Order, 16 FCC Rcd 1052, 1054 n.5 (2001) (stating that the Commission follows the same two-step analysis in assessing the merits of a petition to deny or informal objection and noting that the first step of the analysis is to determine whether "the pleading makes specific allegations of fact which, if true, would demonstrate that grant of the applicant would be *prima facie* inconsistent with the public interest"); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1989) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>11</sup> 47 U.S.C. § 309(k)(1).

<sup>12</sup> 47 C.F.R. § 73.3526(e).

<sup>13</sup> 47 C.F.R. § 73.3588.

public inspection file issues discussed immediately below, it raises no questions requiring further consideration.<sup>14</sup>

8. *Public File Issues. Access.* McDonough argues that Licensee resisted his efforts to gain access to the Station's public file.<sup>15</sup> McDonough alleges that, in March 2006, he requested the public file from John Czarnecki, the Station's manager, and was informed that the public file was available on the FCC website.<sup>16</sup> In Opposition, Licensee asserts that McDonough "mischaracterizes" his conversation with Czarnecki.<sup>17</sup> According to Licensee, at no time during their conversation in March 2006 did McDonough ask Czarnecki to see the public file. Rather, Licensee claims that McDonough requested a copy of the Application and was informed by Czarnecki that it was available on the Commission's website.<sup>18</sup> In Reply, McDonough disputes Licensee's description of his conversation with Mr. Czarnecki, arguing that he did, in fact, request to see the public file.<sup>19</sup>

9. NCE broadcast licensees are required to maintain a public file containing specific types of information related to station operations.<sup>20</sup> The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.<sup>21</sup> Under Section 73.3527(c) of the Rules, the file must be available to the public at any time during regular business hours.<sup>22</sup> We are unable to conclude that McDonough was improperly denied access to the Station's public inspection file based upon the conflicting declarations presented by the parties,<sup>23</sup> but we find that, even were the allegation true, it would be insufficient to warrant denial or designation of the Application.<sup>24</sup> Nevertheless, we caution Licensee to take whatever steps are necessary to ensure that all Station staff are made aware of Licensee's specific obligations under Section 73.3527 of the Rules and that appropriate procedures are in place for its full compliance with those obligations, including ensuring that the Station's public inspection file is available to those wishing to examine it.

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<sup>14</sup> *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3739 (1995); *Booth American Company*, 58 F.C.C.2d 553, 554 (1976).

<sup>15</sup> See Objection at 3.

<sup>16</sup> See Objection, Exhibit No. 1, Sworn Statement of Joseph McDonough.

<sup>17</sup> Opposition at 13.

<sup>18</sup> *Id.* Licensee further claims that the Station timely made the public file available to McDonough when he requested a copy of it in September 2006.

<sup>19</sup> See Reply, Declaration of Joseph McDonough.

<sup>20</sup> 47 C.F.R. § 73.3527(a).

<sup>21</sup> Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6400 (1993)).

<sup>22</sup> See 47 C.F.R. § 73.3527(c).

<sup>23</sup> See, e.g., *FM Broadcasters of Douglas County*, Memorandum Opinion and Order, 10 F.C.C.R. 10429 ¶ 8 (1995), citing *Broadcast Enterprises v. FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968) (holding that contradictory allegations and affidavits do not invariably necessitate evidentiary hearing); *KERN Broadcasting Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 6584 ¶ 12 (1995) (same).

<sup>24</sup> See, e.g., *WSIA(FM), Staten Island, New York*, Letter, 22 FCC Rcd 4890, 4895-96 (MB 2007) (licensee admonished for failing to provide access to station public inspection file, license renewal application granted); *SBR Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 7190 (1999) (allegations that petitioner was denied access to station public inspection file found insufficient to warrant nonrenewal).

10. Contents. McDonough also claims that the Station's quarterly issues/programs list,<sup>25</sup> as well as certain ownership reports,<sup>26</sup> are missing from its public file. He argues that the Station's operating logs do not constitute issues/programs lists, and that Licensee failed to inform the Commission in its Application that its issues/programs lists were missing from the Station's public file.<sup>27</sup> Licensee asserts that it properly answered Section III, Item 3 of the Application, FCC Form 303-S, which requests that Licensee certify that the documentation required by Section 73.3527 has been placed in the station's public inspection file at the appropriate times. Licensee indicated "No" to that certification, indicating that the public file was incomplete with respect to several ownership reports. Licensee asserts that the public file was complete when it filed its Application and claims that the Station prepares an issues/programs list on a monthly basis and places them in the public file.<sup>28</sup> Specifically, Licensee states the following:

Each month, Masconomet prepares a one page summary of the main issues of interest to the station's listeners that the station addressed during that month. Masconomet attaches to this summary the program log for the station for that month. The program log lists all public service announcements broadcast on [the Station] during that month responsive to the issues listed on the summary. Masconomet provides more information on a monthly basis than is customarily provided in a quarterly issues/programs list.<sup>29</sup>

In his October 4, 2006, Supplement, McDonough argues that the licensee's characterization "casts serious doubt" as to whether Licensee has been candid with the Commission, observing that Licensee admitted the omission of certain ownership reports were missing from the Station's public inspection file, but never apprised the Commission that the required quarterly issues-programs lists were also missing.<sup>30</sup>

11. Section 73.3527(e)(8) of the Rules requires NCE broadcast stations to place in the public inspection file every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three months. We disagree with Licensee's assertion that it has satisfied the requirements under this Rule, which specifically states that the list shall "include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment."<sup>31</sup> The description must also include the time, date, duration, and title of each program in which the issue was treated.<sup>32</sup> Licensee apparently did not include this required information in its description, but instead attached the Station's program log. A brief narrative attached to the Station's program logs does not constitute an issues/programs list.<sup>33</sup> We therefore find that Licensee has failed to

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<sup>25</sup> Supplement at 1-2.

<sup>26</sup> See Supplement at 2, n.1.

<sup>27</sup> Supplement at 3.

<sup>28</sup> See Opposition at 5.

<sup>29</sup> *Id.*, Declaration of Joseph Czarnecki at 3.

<sup>30</sup> October 4, 2006, Supplement to Petition to Deny at 2-3 citing *San Francisco Unified School District*, Hearing Designation Order, 19 FCC Rcd 13326 (2004) for the proposition that the Commission will designate for evidentiary hearing a license renewal application if the licensee intentionally misrepresents facts to the Commission.

<sup>31</sup> 47 C.F.R. 73.3527(e)(8).

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., *San Francisco Unified School District*, 19 FCC Rcd at 13331 (finding that "simply typing a list of topics on a downloaded NPR programming list" plus copies of the station's quarterly programming guides do not (continued . . . )

comply with the requirements of Section 73.3527(e)(8) of the Rules. Considering the record as a whole, including the facts that Licensee provided some documentation regarding its issue-responsive programming in its public file, we find that the Consent Decree entered into herein resolves this matter.

12. False Certification. Misrepresentation involves false statements made with intent to deceive.<sup>34</sup> Lack of candor is “concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.”<sup>35</sup> Intent to deceive is established if a licensee knowingly makes a false statement<sup>36</sup> and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive.<sup>37</sup> The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.<sup>38</sup> Moreover, Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>39</sup> Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading.<sup>40</sup>

13. Because Licensee certified in Section III, Item 3 of the Application that its public file was incomplete, we cannot conclude that its certification in the Application was false. However, given the findings discussed above, we find that Licensee’s statements made in support of its certification were false: first, in the Application, in which Licensee stated that the public file was incomplete only with respect to its ownership reports; and second, in its Opposition, where it asserted that it prepared an “issues/programs list” on a monthly basis and placed them in the Station’s public file. Section 1.17(a) of the Rules provides that no person, in any written or oral statement of fact, may provide material factual information that is incorrect or misleading.<sup>41</sup> It also provides that no person may provide in any written statement of fact, “material factual information that is incorrect or omit material information that is

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constitute issues/programs lists); *Cumulus Licensing LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13711, 13716 (MB 2007) (holding that copies of the text of PSAs do not constitute issues/programs lists).

<sup>34</sup> See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

<sup>35</sup> *Id.* See also *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063 (1995) (intent to deceive is necessary and essential element of both misrepresentation and lack of candor).

<sup>36</sup> See

<http://web2.westlaw.com/find/default.wl?referencepositiontype=S&serialnum=2010214641&referenceposition=9986&rp=%2ffind%2fdefault.wl&sv=Split&rs=WLW11.01&db=0004493&tf=-1&findtype=Y&fn=top&mt=Westlaw&vr=2.0&pbc=00D99F6C&tc=-1&ordoc=2023908922> *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

<sup>37</sup> See *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

<sup>38</sup> *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000).

<sup>39</sup> 47 C.F.R. § 1.17(a)(2).

<sup>40</sup> See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd at 4017 (stating that the revision to Section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

<sup>41</sup> 47 C.F.R. § 1.17(a).



necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>42</sup>

14. We believe there was no reasonable basis for Licensee’s assertions that the documentation placed in its file constituted issues/programs lists within the meaning of Section 73.3527 of the Rules. It is clear from the Rule’s text what information must be provided in order for material placed in the public file to constitute an issues/programs list. Even a cursory review of the subject Rule would have apprised Licensee of the need for additional information in order for its documentation to be considered issues/programs lists. Accordingly, we find that Licensee’s statements supporting its certification in both the Application and its Opposition were false. However, we do not find that the Licensee intentionally attempted to deceive the Commission with respect to the contents of the Station’s public inspection file. Based upon the information before us, we conclude that Licensee failed to exercise appropriate diligence in its record-keeping and in its filings with the Commission. Accordingly, we have concluded that the attached Consent Decree, which includes a compliance plan, will improve Licensee’s supervision of the Station and accuracy in the Station’s records and reports to the Commission. In addition, we will admonish the Licensee for its false statements in both the Application and its Opposition regarding the completeness of its public file with respect to its issues/programs lists.<sup>43</sup> We find that there remains no substantial and material question of fact calling for further inquiry regarding Licensee’s candor regarding the Station’s compliance with the Commission’s public inspection file rules.

15. *Pre-filing Announcements.* McDonough asserts that Licensee failed to publish or broadcast the required license renewal pre-filing announcements, as required by Section 73.3580 of the Rules. Licensee concedes this point, but claims that it did broadcast post-filing announcements. The broadcast of post-filing announcements does not diminish the fact that Licensee violated Section 73.3580 of the Rules by failing to broadcast the required pre-filing announcements. Notwithstanding that at least McDonough was not prejudiced by the Licensee’s failure to air pre-filing announcements, we believe that Licensee should be sanctioned for its violation of Section 73.3580. Although Section 1.80 of the Rules does not establish a base forfeiture for violation of Section 73.3580, we find that the failure to broadcast pre-filing announcements (documentation for which should be kept in a station’s public file) is analogous to a failure to maintain a required record. Accordingly, an acknowledged violation will be incorporated into the Consent Decree with Licensee.

### III. NEBEG APPLICATION

#### A. Background.

16. Pursuant to the Section 309(d) of the Act, petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a) of the Act.<sup>44</sup>

<sup>42</sup> 47 C.F.R. § 1.17(a)(2).

<sup>43</sup> See *Bloomfield Hills School District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 14055, 14061 (MB 2007) (licensee admonished for its false certification of Section III, Item 3 of renewal form); *Blue Chip Broadcasting Licenses, Ltd., and Radio One of Dayton Licenses, LLC*, Letter, 21 FCC Rcd 3444, 3447 (MB 2006) (same).

<sup>44</sup> 47 U.S.C. § 309(d). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993).

17. NEBEG filed an application for involuntary time-sharing of WBMT(FM)'s frequency (Channel 202/88.3MHz) pursuant to Section 73.561(b) of the Rules,<sup>45</sup> which indicates that NCE stations which do not operate 12 hours a day each day of the year will be required to share use of the frequency upon grant of an appropriate application proposing such time-share arrangement. Such applications may be filed at any time but, in cases where the parties are unable to agree on time sharing, action on the time-sharing application will be taken only in connection with the license renewal application of the existing station. The record here indicates that NEBEG did unsuccessfully approach Masconomet about sharing WBMT(FM)'s frequency<sup>46</sup> prior to filing its time-share application here.

18. In its Petition, Masconomet argues that: (1) McDonough attempted to "force" Masconomet to give him the Station and, when he failed to do so, filed the Objection against the 2006 Application out of his own personal interest, thus abusing the Commission's processes; (2) McDonough operated a "pirate" radio station in Boxford, Massachusetts and therefore should be disqualified from owning an NCE station; (3) McDonough and his wife, Mirella, incorporated Ipswich Bay Broadcasting Corp. and Good Neighbor Station, Inc., applicants for new low power FM stations at Ipswich, Massachusetts,<sup>47</sup> and Salisbury, Massachusetts,<sup>48</sup> respectively, in 2012, and their undisclosed interests in those entities render them unqualified to own an NCE station;<sup>49</sup> (4) the McDonoughs have made material misrepresentations to and lacked candor with the Commission with respect to the Ipswich and Salisbury Applications; and (5) sharing time on WBMT(FM)'s frequency with NEBEG will not serve the public interest, as the interests of Joseph McDonough are antithetical to those of Masconomet and McDonough has demonstrated that he will disregard and abuse Commission processes when it suits his interest.

19. In the Settlement Agreement, Masconomet proposes to withdraw its Petition. It includes an affidavit required by Section 73.3588 of the Rules that it has neither been promised nor received any financial consideration for the dismissal of the Petition.

## **B. Discussion.**

20. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"),<sup>50</sup> informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a) of the Act.<sup>51</sup>

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<sup>45</sup> 47 C.F.R. § 73.561(b)(2).

<sup>46</sup> See NEBEG Opposition, Sworn Declaration of Joseph McDonough, at 4.

<sup>47</sup> File No. BNPL-20131112AWD, dismissed on November 7, 2014.

<sup>48</sup> File No. BNPL-20131112BHV, granted on February 3, 2014. The station now operates as WXBj-LP, Salisbury, Massachusetts.

<sup>49</sup> NEBEG acknowledges that Joseph and Mirella McDonough resigned their positions with Ipswich Bay Broadcasting and Good Neighbor Station, but appointed family members as their successors and did not sever their relationships with those entities.

<sup>50</sup> 47 U.S.C. § 309(e).

<sup>51</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).



21. We find that McDonough's request for dismissal of the objection complies with Section 73.3588 of the Rules. Additionally, the staff has reviewed the Petition and finds that it raises no questions requiring further consideration.<sup>52</sup>

22. *The Agreement:* Under the terms of the Settlement Agreement,

- Masconomet will operate WBMT(FM) from 10:00 a.m. to 10:00 p.m., Monday through Friday, September through June;
- NEBEG will operate its station from 10:00 p.m. to 10:00 a.m., Monday through Friday, September through June;
- NEBEG will operate its station from 10:00 p.m. on Friday until 10:00 a.m. on Monday all year; and
- NEBEG will operate its station 24 hours each day during the months of July and August.

Thus, both Masconomet and NEBEG will comply with the minimum hours provisions of Section 73.561(a) of the Commission's rules. We therefore shall approve the Agreement and grant the both the WBMT(FM) license renewal applications and the NEBEG Application.

#### IV. CONCLUSION

23. We conclude that McDonough has failed to raise a substantial and material question of fact regarding whether the Application should not be granted. Additionally, we conclude there have been no serious violations of the Act or the Rules and no other violations that, taken together, constitute a pattern of abuse. Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term.

24. Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational ("NCE") station licensed to an educational institution and that the violations at the Station were first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations.<sup>53</sup>

25. The Consent Decree provides, among other things, that the Licensee will institute and maintain, for three years, a Compliance Plan for the Station. In similar situations involving significant public file and paperwork violations at student-run stations, we have agreed to a reduced civil penalty amount of \$1,200.<sup>54</sup> However, here, Licensee has already paid a \$1,500 forfeiture<sup>55</sup> for failing to timely

<sup>52</sup> *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3739 (1995); *Booth American Company*, 58 F.C.C.2d 553, 554 (1976).

<sup>53</sup> See *Policy Statement*, 28 FCC Rcd at 6932 ¶ 2 (MB 2013) (in cases of "first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . instead of issuing a Notice of Apparent Liability . . . , the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a complaints plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, the Bureau will consider the totality of circumstances, including giving appropriate consideration to the station's finances with respect to reducing the base forfeiture amount significantly.").

<sup>54</sup> See, e.g., *University of Maine System*, Order, 30 FCC Rcd 6010 (MB 2015).

<sup>55</sup> See *Masconomet Regional School System*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21696 (MB 2007) ("NAL"). The NAL was assigned account number MB-200741410457.

file a license renewal application pursuant to Section 73.3539 of the Rules;<sup>56</sup> thus, we will require no further civil penalty in this case. A copy of the Consent Decree is attached hereto and incorporated by reference.

26. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of whether the Licensee violated the Public File Rule and the Pre-Filing Notice Rule. We will therefore grant the Application upon the execution of the Consent Decree adopted herein.<sup>57</sup>

#### IV. ORDERING CLAUSES

27. IT IS ORDERED that the Petition to Deny filed on September 12, 2006, by Joseph McDonough, when treated as an informal objection, IS GRANTED in part and IS DISMISSED in all other respects, and the Petition to Deny filed by Masconomet Regional School District on September 9, 2014, IS DISMISSED.

28. IT IS FURTHER ORDERED that, pursuant to Section 1.17 of the Rules, Masconomet Regional School District IS ADMONISHED for its apparently false statements regarding the completeness of the public inspection file of Station WBMT(FM) under Section 73.3527 of the Rules.<sup>58</sup>

29. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>59</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Rules,<sup>60</sup> the Consent Decree attached hereto IS ADOPTED.

30. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

31. IT IS FURTHER ORDERED that the Joint Request for Approval of Settlement IS GRANTED and the Agreement IS APPROVED and the applications of Masconomet Regional School District for renewal of license (BRED-20060208AAJ; BRED-20131127BNT) ARE GRANTED.

32. IT IS FURTHER ORDERED that the application of New England Educational Broadcast Group, Inc. for construction permit for a new NCE station at Newbury, Massachusetts (BNPED-20140227AFX) IS GRANTED.

33. IT IS FURTHER ORDERED that the authorizations are subject to the following condition:

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<sup>56</sup> 47 C.F.R. § 73.3539.

<sup>57</sup> Typically, in cases involving significant public file deficiencies, we would grant the Station's license renewal application for a period of four years rather than a full term of eight years. *See, e.g., University of Maine System*, 30 FCC Red 6010 (MB 2015). However, given the length of time that the Application has been pending and the fact that Licensee has already timely filed a supplemental license renewal application for the Station, we will not so limit the renewal authorization here.

<sup>58</sup> 47 C.F.R. § 73.3527.

<sup>59</sup> 47 U.S.C. § 4(i).

<sup>60</sup> 47 C.F.R. §§ 0.61, 0.283.

Pursuant to 47 C.F.R. § 73.561(b)(1), the Agreement between Masconomet Regional School System and New England Educational Broadcast Group, Inc. is hereby made a part of the terms and conditions of this authorization.

34. IT IS FURTHER ORDERED that copies of this Order shall be sent, by Certified Mail Return Receipt Requested and by First Class Mail, to Mr. Michael Novello, Masconomet Regional School System, 20 Endicott Road, Topsfield, MA 01983, and to its counsel, David G. O'Neill, Esq., Rini Coran, P.C., 1615 L Street, N.W., Suite 1325, Washington, DC 20036, to Mr. Michael McDonough, 126 Ipswich Road, Topsfield, MA 01983, and New England Broadcasting Educational Group Inc., 58 Central Street, Ipswich, MA 01938 and to their counsel, Cary S. Tepper, Esq., Booth, Freret, Imlay & Tepper, P.C., 7900 Wisconsin Ave., Suite 304, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

**CONSENT DECREE****I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and the Masconomet Regional School District, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule and Pre-Filing Notice Rule, as defined below, that have arisen in the Media Bureau's review of the pending application for the renewal of the license for Noncommercial Educational Station WBMT(FM), Boxford, Massachusetts.

**II. Definitions**

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
  - (b) "Application" means the pending application for the renewal of the license for Station WBMT(FM), Boxford, Massachusetts (File No. BRED-20060208AAJ);
  - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
  - (d) "Commission" or "FCC" means the Federal Communications Commission;
  - (e) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Public File Rule at the Station, as summarized in the Appendix hereto;
  - (f) "Effective Date" means the date on which the Bureau releases the Order;
  - (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
  - (h) "Licensee" refers to the Masconomet Regional School District;
  - (i) "Order" means the Order of the Bureau adopting this Consent Decree;
  - (i) "Parties" means the Bureau and the Licensee;
  - (j) "Pre-Filing Notice Rule" means Section 73.3584(d)(4)(i) of the Rules, 47 C.F.R. § 73.3584(d)(4)(i);
  - (k) "Public File Rule" means Section 73.3527 of the Commission's Rules, 47 C.F.R. § 73.3527;
  - (l) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
  - (m) "Station" means Station WBMT(FM), Boxford, Massachusetts (Fac. ID No. 40640);

and

- (n) “Violations” means the violations of the Public File Rule and the Pre-Filing Notice Rule.

### III. Background

3. On February 8, 2006, Licensee filed the Application to renew its license for the Station. In the Application, the Licensee disclosed to the Commission that the Station had not fully complied with the Public File Rule. Specifically, in its issues/programs lists throughout the license term, Licensee did not “include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment”<sup>61</sup> nor did its lists include the time, date, duration, and title of each program in which each issue was treated.<sup>62</sup> Additionally, Licensee failed to broadcast required pre-filing announcements regarding the Application, in Violation of the Pre-Filing Notice Rule and therefore did not retain documentation of those announcements in the Station’s public inspection file, as required by the Public File Rule.

4. Because of the compliance issues raised by the representations concerning the Station’s compliance with the Public File and Pre-Filing Notice Rules, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

### IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Public File and Pre-Filing Notice Rules compliance issues referred to in Paragraph 3 above would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee’s compliance with the Public File and Pre-Filing Notice Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Each represents and warrants to the other that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee’s Violations at the Station, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

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<sup>61</sup> 47 C.F.R. 73.3527(e)(8).

<sup>62</sup> *Id.*

9. The Licensee hereby stipulates that the Station violated the issue and programs lists requirements of the Public File Rule in the maintenance of the Station's public inspection file during the entire license term for the Station and that it failed to air the required pre-filing announcements regarding the filing of the Application and retain documentation of those announcements in the Station's public inspection file.

10. The Bureau agrees to grant the Renewal Application after the Effective Date, provided that there are no issues other than the Violations that would preclude grant of the renewal application.

11. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Public File and Pre-Filing Notice Rules. The Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

12. The Licensee represents that, as of the Execution Date of this Consent Decree, the Station's public inspection file fully comports with the Public File Rule except as described in Paragraph 3 above.

13. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

14. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

15. The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

16. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

17. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

18. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a *trial de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.



19. The Licensee and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

20. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_  
William T. Lake, Chief

Date: \_\_\_\_\_

**MASCONOMET REGIONAL SCHOOL DISTRICT**

By: \_\_\_\_\_  
Kevin M. Lyons, Ed.D., Superintendent

Date: \_\_\_\_\_

**APPENDIX****COMPLIANCE PLAN FOR STATION WBMT(FM)**

The Masconomet Regional School District, or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Public File and Pre-Filing Notice Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I.
  - A. The Station Manager and other appropriate staff of the Station will log all broadcasts of public affairs and public service programming broadcast by the Station. The logs of public affairs and other public service programming will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
  - B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in the public file.
  - C. Late-filed lists will be reviewed and signed by the Station's management and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public files, and the reason for the late filing.
  - D. The Station's management will train all employees concerning the absolute requirement to follow all Commission rules, regulations, and policies, specifically, fully explaining the obligations imposed by the Public File Rule to each employee charged with maintenance of the Station's public file. Should the Licensee or the Station's management learn that the Public File Rule has been violated, any employee responsible will be subject to appropriate disciplinary action, including being removed from any duties relating to the public file.
- II. For a period of three years from the Effective Date, the Licensee and/or any successor licensee, as appropriate, will conduct audits of the Station's public file as detailed below. The three-year period will terminate on the successful completion of the third annual public file audit pursuant to Item II(C). The second and third audits pursuant to Item II(C) will be due on the anniversary of the first audit. The audits of the public files shall be performed as follows:
  - A. Within one year of the Effective Date, audits of the Station's public file will be conducted by an authorized representative of the Maine Association of Broadcasters under the Alternative Broadcast Inspection Program;
  - B. a semi-annual review of the Station's public file will be conducted by the Station's management; and
  - C. annual, in-person or video conference, audits of the Station's public file will be conducted by the Licensee's Telecommunications Transmission Engineer and overseen by the Licensee's CIO, with advice and guidance from the Licensee's FCC counsel, as needed. The first annual audit shall be completed not less than six (6) months and not more than nine (9) months following the Effective Date.
- III. The Licensee shall annually submit a sworn certification to the Commission, signed by the Licensee, that the Station's public file fully complies with the Public File Rule. If the Licensee cannot truthfully make this certification, it shall set forth in detail any public file deficiencies and

describe any corrective measures taken. This report shall be filed within ten (10) days of the completion of the first annual public file audit pursuant to Item II(C) above, and on that date yearly thereafter during each year of the license term. A copy will be served on Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at Peter.Doyle@fcc.gov.

- IV. Licensee's management will use a commercially-available calendaring system, such as Microsoft Outlook or Google Calendar, to track filing deadlines, including, as necessary, any required broadcast or published application notices. An authorized officer of the Licensee will provide an annual declaration to the Bureau certifying that, since the commencement of this Compliance Plan or the filing of its last report, if any, the Licensee has maintained and is maintaining such a calendar system each year of the three-year term of this Compliance Plan. In the event the Licensee is unable to so certify, it will disclose the reasons there for and indicate what steps it has taken to come into compliance with this Compliance Plan.
- V. Licensee will conduct training for all of the Station's employees on compliance with FCC Rules applicable to the Station's operations. In preparing this training, Licensee will confer with Licensee's FCC counsel, or other comparable professionals. Licensee will videotape this workshop and use it as refresher training for staff and management at least every twelve (12) months, and to train any new Station employee with Public File duties within five (5) days of commencement of his/her duties at the Station.
- VI. The Compliance Plan, set forth above, will be under the direct supervision of the Masconomet Regional School District's Superintendent, Kevin M. Lyons, Ed.D., or by any member of the Masconomet Regional School System District designated by Mr. Lyons, or in the event Mr. Lyons is no longer with the Masconomet Regional School District, or if the Licensee has been assigned, by his successor or his successor's designee at the Masconomet Regional School District or successor Licensee's Board.